

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 1349 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

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GUJARAT POLLUTION CONTROL BOARD - Petitioner(s)
Versus
JAGADISH NATHABHAI CHAVDA - Respondent(s)

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Appearance :

MR DG CHAUHAN for Petitioner(s) : 1,
 NOTICE SERVED for Respondent(s) : 1,
 MR MUKESH H RATHOD for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 12/09/2007

ORAL JUDGMENT

1. The petitioner - Gujarat Pollution Control Board is before this Court under Article 227 of the Constitution of India,

being aggrieved by the award dtd.2/11/1998 passed by the learned Special Labour Court, Ahmedabad in Reference (LCIDAT) No.27 of 1997 (Old Reference No.362 of 1993), directing reinstatement of respondent workman with 100% back wages and consequential benefits.

2. Short facts necessary for disposal of the present writ application are that the petitioner was appointed as a temporary driver by the petitioner Board under separate orders. The orders were to run for a period of 29 or less days. The respondent was appointed on 22/9/1989 and with artificial break, continued upto 1/2/1991. Thereafter, under some order which is not placed on the records and as alleged by the petitioner, the respondent was appointed in Gems Minar Project w.e.f. 2/2/1991 and worked upto 24/7/1991. After a break of 53 days, he was reappointed on 17/9/1991 and again with some break, he was ultimately removed from service on 20/12/1991. The workman being aggrieved by the said action on the part of the employer, obtained a reference and submitted before the Labour Court that as he had worked for 240 days in 12 calender months preceding the date of retrenchment, the order should be held to be bad and he

was entitled to reliefs under law.

3. Present petitioner, after notice filed its appearance and submitted the written statement. They submitted that though originally the respondent workman was appointed with the Board but later on he was appointed in Gems Minar project and as his appointment was for a specific period for a specific project, the workman was not entitled to any relief. They also submitted that in view of the break of 53 days in the continuity of service, the workman could not be held to be in continuous service for a period of 240 days.
4. After recording evidence and hearing the parties, learned trial court held that the workman had worked for more than 240 days in 12 calendar months preceding the date of retrenchment, therefore, the removal was violative of sec.25-F of the Industrial Disputes Act, 1947 ("the Act" for short). The Court also found that the respondent workman was entitled to 100% back wages with continuity of service and other consequential benefits. Being aggrieved by the said award, the Board is before this Court.

5. Mr.Chauhan, learned counsel for the petitioner Board had raised manifold arguments in support of the writ application which I shall take one after other.
6. Mr.Chauhan submitted that as the respondent workman was appointed on a special project for a specified period, provisions of sec.2(oo) and sec.2(bb) of the Act would be applicable and termination of the services of the workman would not be treated to be a retrenchment. Unfortunately, the argument is based upon a foundation which is yet to be founded. It was vehemently argued that the project was funded by the Central Government, therefore, it was a specific project, but nobody knows what were the terms of such funding, whether the project was a baby of present petitioner Board and only financial assistance was to be provided by the Central Government or it was a project of the Central Government which was simply to be looked after by the petitioner Board and as such the petitioner Board had no responsibility. From various orders annexed with the writ application, it would clearly appear that the petitioner Board was the appointing authority. It also appears that persons who

were working in the regular cadre or who were on the roll of present petitioner as temporary / ad-hoc / daily wagers, were shifted from their regular jobs to the jobs in the project. If the provisions of sec.2(oo) (bb) of the Act are to be applied then, one has to prove that the employment was for a fixed period and the termination of the service of the workman was not as a result of the non-renewal of the contract of employment between the employer and the workman concerned. True it is that in the present case, the order of appointment says that it is for a fixed period or would be co-terminus with the end of the project, but if we unveil the true intention behind these words, it would clearly appear that the respondent workman was working in continuity of his earlier appointment. From the records, it would appear that the workman continued to work upto 1/2/1991 in the regular cadre and immediately thereafter on 2/2/1991, he came to be appointed in the alleged project work, which virtually was a corporate fraud played by the present petitioner Board. I am unable to concede to the arguments that in view of sec.2(oo) (bb) of the Act, removal of workman would not amount to retrenchment.

7. It was then contended that even otherwise, the workman did not work for 240 days as required under sec.25(B) of the Act therefore also, the provisions contained in sec.25-F of the Act would not apply.

8. Sec.25-B of the Act reads as under:-

“Sec.25-B. Definition of continuous service.- For the purposes of this Chapter -

(i) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(ii) Where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for

not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) ninety-five days, in the case of workman employed below ground in a mine; and
- (ii) one hundred and twenty days, in any other case.

Explanation :- For the purpose of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

- (i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;

(ii) he has been on leave with full wages, earned in the previous years;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.”

Sub-section 1 of sec.25-B of the Act provides that a workman shall be said to be in continuous service for a period (emphasis supplied) if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal etc.

Continuous service as defined under sec.25-B(1) of the Act are in relation to period which is in dispute. Sec.25-B(1) can not be read to override sec.25-B(2). When a person comes before the court and submits that he had worked for 240 days within 12 calender months preceding the date of retrenchment, then his case would

fall under sub-section 2 of sec.25-B of the Act. Sub-sec.2 of sec.25-B of the Act provides that where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer for a period of one year, if the workman, during a period of 12 calender months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than 240 days. Sub-sec.2 does not talk of uninterrupted services. Sub-sec.2 simply provides that if a workman has worked for 240 days in 12 calender months preceding the date with reference to which calculation is to be made, then he would be deemed to be in continuous service.

9. The Apex Court has repeatedly observed that in a case of retrenchment, date with reference to which calculation is to be made would be the date of retrenchment, meaning thereby, one has to revert back for a period of 12 months from the date of retrenchment / termination. If the workman was removed on 20/11/1991, then the Court has to look back into 12 calender months preceding the date of retrenchment which would be 21/11/1990. During

this period of 12 calender months, if the workman had worked for 240 days, then, under sec.25-B(2) of the Act, he would be deemed to be in continuous service under the employer. For sub-section 1 of sec.25-B of the Act, one is said to be in continuous service, if he is in uninterrupted service for a particular period with certain exceptions in relation to leave, lock-out, strike etc., while sub-sec.2 of sec.25-B of the Act does not talk about any continuity in the service or uninterrupted service, but simply talks about 240 days work in 12 calender months.

10.Mr.Chauhan, has placed his strong reliance upon the judgment of this Court in the matter of Executive Engineer Vs. Chetan P.Oza, 2005 (2) GLH 742, to contend that a workman cannot contend that he had worked for 240 days in any calender year, therefore, he is entitled to benefit of continuous service.

11.With due respect to Mr.Chauhan, learned counsel, I must say that he is trying to read Head-note which does not reflect wisdom of the Court, but simply reflects the understanding of an editor. It is always dangerous to read and rely upon the Head-note which an editor with his

understanding prepares. To understand and appreciate the facts and impact of a judgement, one must read the judgment as a whole. When some stray sentences are picked up from the judgment and are relied upon, they are likely to create an impossible situation.

12. In the matter of Executive Engineer (supra), the question was altogether different. In the said matter, the question was whether a particular workman had worked for 240 days in 12 calendar months preceding the date of retrenchment. Reliance was placed upon the judgment of the Apex Court in the matter of UP Drugs and Pharmaceuticals Co.Ltd. Vs. Ramanuj Yadav, 2004 SCC (L&S) 46 to contend that if a workman had worked for 240 days in any 12 calendar months, then, he would be entitled to benefit of sec.25-F of the Act. The Division Bench of this Court held that the said judgement was depending upon the language of the Act as applicable to State of U.P. The Court also found that there was a marked distinction between the language employed in the U.P. Act and the Central Act. In U.P. Act the words “in 12 calendar months preceding the date of termination” were missing, therefore, in U.P. Case the Supreme Court

observed that if a workman proves that he had worked for 240 days in any calender months, then, he would stand protected under sec.25-F of the Act and in those circumstances, the Division Bench made the observation that in view of the language employed in the Central Act, a person would not be allowed to contend that as he has worked for 240 days in any calender year, therefore, he would be entitled to the benefits of continuous service. The case on which reliance is placed, was decided on altogether different facts and the observations made by this Court were on the facts of the case, when the Court observed that “undisputedly, the respondent has not completed 240 days in just preceding 12 calender months, he would not be entitled to any benefits under sec.25-F read with sec.25-B of the I.D. Act” Once it is proved that a workman had worked for 240 days in 12 calender months preceding the date of retrenchment, then, he would be deemed to be in continuous service for the purposes of sec.25-F read with sec.25-B of the Act.

13.It was then contended that the project stood closed, therefore, an order of reinstatement could not be made.

14. In the opinion of this Court, the argument would not be available to the petitioner in view of my earlier findings that Pollution Control Board was issuing appointment orders to suit its cause and case. In fact, they were transferring one man from one place to another and were issuing orders in their favour. Though appointment was termed to be an appointment for the project, but, in fact, the appointment continued to be under the employership of the present petitioner Board. From the Certificate dtd.26/8/1991 issued by Mr.K.M. Patel, Administrative Officer of Gujarat Pollution Control Board, it would clearly appear that the respondent workman had worked with the Board as a driver as daily wage temporarily for the period detailed in the certificate. If such was the certificate issued by the Administrative Officer of the Gujarat Pollution Control Board and correctness and authenticity of the certificate was not disputed by the Pollution Control Board, then, they cannot be allowed to say that the appointment of the respondent workman was on a project and was co-terminus with the closure of the project.

15. It was then contended that present is a case where the

workman would not be entitled to 100% back wages, nor any benefit of continuity of service can be granted to him. Taking into consideration that the workman was being appointed from time to time and had virtually worked for almost about 295 days during the period between 21/11/1990 and 20/11/1991, I find no hesitation in holding that the court below was not unjustified in directing award of 100% back wages, because if we deduct Sundays and other gazetted holidays, then a workman would be required to work for about 295 / 300 days in a year. In the present case, the workman had worked for 295 days in a period of 12 calendar months. The respondent workman certainly would be entitled to be reinstated on the post held by him. If the petitioner is still of the opinion that they do not need the services of the present respondent, then, after observing legal provisions, they may take appropriate action against the respondent workman.

16. The petition is dismissed with costs quantified at Rs.5000=00. Rule is discharged.

(R.S. GARG, J.)

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